

REMARKS

By this amendment, Claims 24, 25, 28, 29, and 32-34 are cancelled, and Claims 26, 27, 30-31, and 35-36 are currently amended. As such, Claims 26-27, 30-31, and 35-36 remain in the application.

The Applicant graciously thanks the Examiners for the interview of February 16, 2010, particularly in light of the Examiners' demanding scheduling conflicts brought on by the weather-related Office closures. The Applicant and the Examiners were able to make a degree of progress during the interview. The claims as presently submitted reflect that which was discussed during the interview.

During the interview, the Applicant's attorney argued that Greenfield does not disclose an extension spring as previously claimed because the helical axis is oriented differently between the claimed invention and that of Greenfield, and that the two function differently as well. The Applicant's attorney and the Examiners were in agreement that the orientation and function of the helical spring in the claims were patentably distinct over that disclosed by Greenfield. The Examiners suggested more clearly defining the difference between the orientations of the springs. The Applicant has currently amended Claims 30 and 35 to clearly define the longitudinal axis of the helical spring as extending along the piece.

In addition, the Examiners and the Applicant's attorney were in disagreement as to the meaning of "substantially" as used to claim an elastomeric rod having "substantially circular cross-section." In the Advisory Action, the Examiners had previously stated that "substantially" meant 50% or more. However, when questioned during the interview, no

specific caselaw or published reference was cited as defining “substantially” as such. Nonetheless, the Examiners and the Applicant’s attorney provisionally agreed that amending “substantially” to “essentially” would define patentability over the cited prior art so long as “essentially” was sufficiently defined by the Applicant. Accordingly, the Applicant has amended Claims 31 and 35 to now require that the rod be “essentially” circular in cross-section rather than “substantially.” As claimed herein, the Applicant defines “essentially circular cross-section” to mean a cross-section with an outline in the form of a curved, closed loop, i.e., without any noticeable or significant flat section, and thus clearly excluding a semi-circular outline. MPEP 2173.05(b) (citing *In re Marosi*, 218 USPQ 289 (CCPA 1983)) states that the use of “essentially” is definite where guidelines and examples sufficient to enable one of ordinary skill in the art to draw a line to define infringement.

The Applicant’s attorney also argued that Holt does not disclose an elastomeric material which is “formed integrally” with the clothing material because the elastomeric material disclosed by Holt is contained within a pocket on the clothing. The entire function of the clothing disclosed by Holt is to have the wearer successively remove the elastomeric material and replace it with another one which is heavier. Not only does Holt not disclose an elastomeric material which is not “integrally formed” with the clothing, but the invention in Holt could not function if it was “integrally formed” as required. Nonetheless, in an effort to move prosecution forward, and acting without prejudice for the reasons stated above, the Applicant has cancelled Claim 28 and amended Claim 35 to remove this claim limitation.

Lastly, in the Advisory Action the Examiner suggested the Applicant amend “bonded” to mean “being attached by adhesive” if the Applicant intends it to mean as such. The Applicant’s attorney asked if an amendment from “bonded” to “bonded by a bonding agent” would be permissible as well, and the Examiner provisionally agreed that that such language would be fine.

The above-identified Office Action has been reviewed and the references carefully considered. In view hereof, the present amendment is submitted. It is contended that by the present amendment all bases of rejection set forth in the Office Action are traversed and overcome. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

The Examiner has rejected Claims 24-33 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Applicant has cancelled Claim 24, and therefore withdrawal of the rejection of Claims 24-33 is respectfully requested. The Applicant notes that portions of the rejected claim language found in the now-cancelled Claim 24 have been transferred to Claims 26, 30, and 31, however, these claims include the phrase “the plurality or each plurality” as suggested by the Examiner.

The Examiner’s rejections will be addressed in the order presented in the Detail Action section of the Office Action.

Claim Rejections 35 U.S.C. § 102(b)

The Examiner has rejected Claims 24, 25, 29, 30, and 32-36 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,261,871 to Greenfield. The Examiner has also rejected

Claims 24-29 and 31-36 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,555,562 to Holt et al.

Applicant traverses the Examiner's rejection. Under 35 U.S.C. § 102, to constitute an anticipation all the claimed elements must be found in exactly the same function and united in the same way to perform the identical function in a single unit of the prior art. Or stated differently, anticipation can only be established by a single prior art reference which discloses each and every element of the claimed invention.

By this amendment, the Applicant has amended the subject matter of each claim. The amendments predominantly constitute a combination of previously presented claims. In order to help clarify the Examiner's rejection of the claims and how those rejections apply to the elements found in the currently amended claims, the Applicant offers the following arguments of patentability.

Claim 26

Claim 26 is amended herein to include the claim limitations previously presented in Claims 24-26. The Examiner has rejected Claims 24-26 as anticipated by Holt. The Applicant argues that Claim 26 as previously presented is not anticipated by Holt for the following reasons. The Applicant notes that regarding Claim 26 (and Claims 27 and 28 as well) it must be borne in mind that Claim 26 has always made it clear that the claimed clothing article is comprised of clothing material as well as the elongate resilient pieces. Conversely, in commenting upon Claim 26 (and Claim 28 as well), the Examiner refers to each elongated resilient piece as taking the form of a strip of elastomeric material which is bonded to the clothing garment, which is not what is claimed.

To that end, the Examiner interprets the word “bonded” in the claim in a manner which is clearly not intended by the Applicant. As shown in Figures 10 and 11 of the application, and as described in the specification, “[t]he elongate resilient pieces 6 shown in Figure 11 take the form of strips of elastomeric material **bonded** to the clothing material 1.” (page 6, lines 28-30) (emphasis added). Such language would indicate to one having ordinary skill in the art that the elastomeric materials are adhered to the clothing material by a bonding agent such as an adhesive. By doing so, the additional weight, cost, and materials associated with pockets can be avoided.

However, Holt discloses elongated pockets for receiving weight members – not weight members which are “bonded” to the suit. As shown in Figures 5 and 6 of Holt, and as described in its specification, “[t]he pockets . . . may be sewn to the suit 10 by suitable stitching threads 98 (FIGS. 5 and 6). The pockets 60-75 have respective zippers . . . for removing the weight members 80-95 to clean the suit 10, or to replace the weight members 80-95 . . .” (col. 5, lines 9-15). Thus, it is seen that Holt does not disclose strips of elastomeric material which are bonded to the clothing material as required by Claim 26.

The Examiner may argue that Figure 2 of the present invention discloses the use of pockets for securing the elongated members to the clothing material. However, as described in the Applicant’s specification, Figures 2 and 3 are directed to modified versions which are not claimed by Claim 26.

Pursuant to both the Advisory Action and the February 16, 2010 Examiner Interview, the Applicant has amended Claim 26 to require the material be bonded “by a

bonding agent.” It is believed that this claim language overcomes the rejection of Holt for the reasons stated above.

Therefore, the Applicant respectfully requests the Examiner withdraw the rejection of Claim 26.

Claim 27

The Examiner has rejected Claim 27 as anticipated by Holt. Claim 27 is dependent upon Claim 26, and is thus argued as patentable over Holt for the reasons provided above. In addition, Claim 27 furthers the distinction of Claim 26 over Holt. Even though the strips disclosed by Holt have a circular segmental cross-section providing a flat face, this is not to provide a “relatively significant area for bonding” as required by Claim 27 as discussed above. Even assuming that “bonding” as used in Claim 26 could mean connecting the strip to the clothing material by way of a pocket, the provision of a flat face giving a relatively significant area would be irrelevant to using a pocket to hold the strip.

Therefore, the Applicant respectfully requests the Examiner withdraw the rejection of Claim 27.

Claim 30

The Examiner has rejected Claim 30 as anticipated by Greenfield. Claim 30 is amended herein to include the claim limitations previously found in Claims 24-25 and 30, thereby obviating the Examiner’s rejection. In addition, Claim 30 has been amended pursuant to the February 16, 2010 Examiner Interview so as to more clearly define the claimed invention over Greenfield, namely that the helix axis of the spring extends longitudinally of the elongated piece rather than transversely thereof.

An advantage of using the present spring instead of a torsion spring as in Greenfield is that the present spring is much better able to adapt itself to the user's body contours than are the straight wire portions located distally and proximally of the loop 60 or the coil 61 in the torsion spring 41. Moreover, such straight wire portions are more likely to pierce the pockets and injure the user than would an elongate piece which is in the form of a helical spring with its helix axis along the piece (such as in Applicant's Figures 2 and 3). Therefore the Applicant contends that Claim 30 as now amended is patentable over Greenfield.

Thus, Claim 30 is amended herein to distinguish the orientation of the helix of the present spring from that of the coil in Greenfield. More specifically, Claim 30 is amended to now require "each elongate resilient piece is a helical spring having its longitudinal axis extending along said piece." As now clearly defined, the orientation of the helix of the spring in Claim 30 differs from the coil 61 of Greenfield in that the present helix is orientated longitudinally of the elongate resilient piece, i.e., substantially parallel to the wearer's sagittal plane, whereas the helix of the coil 61 in Greenfield is substantially perpendicular to the sagittal plane and thus transverse to the elongate resilient piece (i.e. the wire member 41) of which the coil forms a part.

Therefore, the Applicant respectfully requests the Examiner withdraw the rejection of Claim 30.

Claim 31

Claim 31 is amended herein to include the claim limitations previously found in Claims 24-25 and 31, as well as limitations discussed during the February 16, 2010 Examiner Interview. The Examiner has rejected Claim 31 as anticipated by Holt. The Applicant

argues that Claim 31 as previously presented was not anticipated by Holt for the following reasons. Claim 31 required elongate resilient pieces each having a substantially circular cross-section. The Examiner argues that Holt discloses as such in Figures 5 and 6.

The Applicant respectfully contends that Holt clearly does not disclose as such. As understood by one having ordinary skill in the art, and as defined by Webster's Dictionary, "circular" means "having the exact or approximate form or outline of a circle." As seen in Figures 5 and 6 of Holt, disclosed therein are members which are substantially semicircular in cross-section and not substantially circular in cross-section as formerly required by Claim 31.

Pursuant to the February 16, 2010 Examiner Interview, the Applicant has amended Claim 31 to require the elastomeric rod to have an "essentially circular cross-section" as defined above.

Therefore, the Applicant respectfully requests the Examiner withdraw the rejection of Claim 31.

Claim 35

The Examiner has rejected Claim 35 as anticipated by both Holt and Greenfield. Claim 35 is amended herein to further define patentability over the stacked coil disclosed by Greenfield.

Applicant notes that the Markush group directed to a "material formed integrally with said clothing material" has been deleted to facilitate prosecution for the reasons provided above regarding the February 16, 2010 Examiner Interview.

Claim 35 is argued as patentable over Greenfield for the same arguments presented above regarding the rejection of Claim 30 over Greenfield.

Claim 35 is argued as patentable over Holt for the same arguments presented above regarding the rejection of Claims 26 and 31 over Holt.

Therefore, the Applicant respectfully requests the Examiner withdraw the rejections of Claim 35.

Claim 36

The Examiner has rejected Claim 36 as anticipated by both Holt and Greenfield. Claim 36 is amended herein to further define patentability over the stacked coil disclosed by Greenfield.

Claim 36 is argued as patentable over Greenfield for the same arguments presented above regarding the rejection of Claim 30 over Greenfield.

Claim 36 is dependent upon Claim 35, and is thus argued as patentable over Holt by virtue of its appendence to Claim 35.

Therefore, the Applicant respectfully requests the Examiner withdraw the rejections of Claim 36.

In summary it is respectfully submitted that neither Claim 30, 35, nor 36 are anticipated or rendered obvious by Greenfield. In addition, it is respectfully submitted that none of Claims 26-27, 31, 35, or 36 are anticipated or rendered obvious by Holt.

Therefore, the Applicant submits that the claims presented herein define patentably over the prior art of record herein.

Conclusion

It is respectfully submitted by entry of the amendments presented herein that all bases of rejection and objection will have been traversed and overcome, and thus, that the application will be placed in a condition for allowance. Entry of the claims as amended is, therefore, respectfully requested.

This submission is being made in accordance with 37 C.F.R. § 1.34. The undersigned attorney is not an attorney of record, but is acting under the authority of attorney of record Arnold S. Weintraub (Reg. No. 25,523), who is currently unavailable to act on behalf of the applicant.

Respectfully submitted,

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